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April 11, 1996

**VIA HAND DELIVERY**

EX PARTE OR LATE FILED

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

Re: Ex Parte Communication in CC Docket No. 95-185

Dear Mr. Caton:

Cox Enterprises, Inc. ("Cox"), by its attorneys, submits this *ex parte* letter for incorporation into the above-referenced proceeding.<sup>1/</sup> This letter responds to claims by some local exchange carriers that interconnection by commercial mobile radio service providers should be governed by the standards of Sections 251 and 252 of the Communications Act, which were added by the Telecommunications Act of 1996 (the "1996 Act"). Cox previously has addressed the erroneous claim that the Commission is required as a matter of law to apply these standards to CMRS interconnection.<sup>2/</sup> This letter focuses on the likely practical results of attempting to adapt the Section 251 and 252 standards to CMRS interconnection.

Cox and others previously have described the results of interconnection "negotiations" under the regime that prevailed prior to the passage of the 1996 Act. LECs have used their market power to insist upon interconnection prices that by the LECs' own admission far exceed cost and far exceed any charges that are imposed on landline local carriers. See, e.g., Reply Comments of Vanguard at 6-7 (revenue and interconnection charges are at least 230% of cost based on USTA estimates). Some LECs actually have claimed that the current

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<sup>1/</sup> In accordance with Section 1.1206 of the Commission's Rules, the original and two copies of this letter are being filed with the Secretary's office.

<sup>2/</sup> See Letter of Werner K. Hartenberger and J.G. Harrington, counsel to Cox Enterprises, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 95-185, March 22, 1996; Reply Comments of Cox at 66-74.

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interconnection arrangements are "reciprocal," even though the LEC is compensated for both originating and terminating CMRS calls. See Comments of Pacific Telesis at 7-9. These current practices, standing alone, provide significant evidence of the likely results of adopting the Section 251 and 252 negotiation regime for CMRS interconnection.

Since the close of the comment period, however, additional concrete evidence of the LEC intent to continue to discriminate against CMRS providers has become available. U S West has developed (and widely publicized) a "model" interconnection agreement it intends to use as the basis for its Section 251 and 252 interconnection negotiations.<sup>3/</sup> By its own terms, however, the agreement will be made available *exclusively* to landline competitive local exchange carriers. It does not permit any interconnection with CMRS providers. In fact, Section IV(A) of the proposed agreement states that "This Agreement does not address the termination of wireless traffic."<sup>4/</sup>

Thus, even while arguing that Sections 251 and 252 should be applied to LEC-CMRS interconnection, U S West also is proposing to discriminate between CMRS providers and landline competitive LECs in future interconnection arrangements.<sup>5/</sup> If U S West intended to treat CMRS providers as co-carriers — which would be required under the interpretation of the 1996 Act it and other LECs have presented to the Commission — it would not have excluded them from its proposed agreement.

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<sup>3/</sup> See *U S West Issues Model Interconnection Agreement to Competition*, COMM. DAILY, Apr. 1, 1996, at 1. While U S West proposes this agreement as a model for interconnection negotiations, it is seriously flawed in many respects and does not appear to comply with the standards of the 1996 Act. This letter does not, however, address those issues.

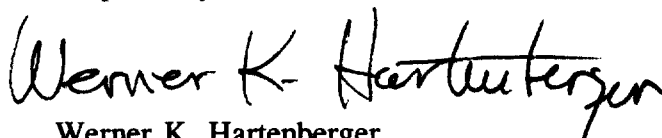
<sup>4/</sup> Similarly, only competitive local exchange carriers may obtain interconnection under the proposed agreement and the term "competitive local exchange carrier" is defined in a way that prevents CMRS providers from qualifying because they do not obtain state certification. See Section III(J) (competitive local exchange carrier must be "certified to provide its own dial tone through its own local exchange switching office(s)"). Copies of pages of the proposed agreement with the relevant passages highlighted are attached to this letter.

<sup>5/</sup> U S West most recently reiterated its position that Sections 251 and 252 should govern interconnection between CMRS providers and LECs in an *ex parte* meeting with the Wireless Bureau staff. See Letter of Cyndie Eby, Executive Directory-Federal Regulatory, U S WEST, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission, in CC Dkt. 95-185, submitted April 4, 1996 at 1 (describing discussion with Wireless Bureau staff).

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U S West's intentional exclusion of CMRS providers from its proposed interconnection agreement speaks volumes about the likely results if the Commission were to defer to LEC pressure to abdicate its authority to adopt CMRS-specific interconnection rules. The LECs will continue to follow their pattern of treating CMRS providers not as co-carriers but as second-class citizens (indeed, currently five of the eight largest cellular providers, with coverage of areas with a population of more than 210 million, are BOC-affiliated, and they have been most happy to accommodate the anticompetitive interconnection policies of their owners). The combination of these cozy relationships and the enormous market power of the BOCs results in the kinds of take-it-or-leave-it interconnection arrangements at grossly inflated rates they have today.<sup>6/</sup> While U S West is the first LEC to take this position, the intransigence of LEC commenters in this proceeding makes it obvious that other LECs will continue to discriminate against CMRS providers and overcharge for interconnection if they are given the opportunity to do so. History shows that strong Commission action is necessary to correct LEC abuses in CMRS interconnection. Without specific action in this proceeding to adopt an interim bill and keep interconnection compensation, there can be little doubt that CMRS providers will continue to be discriminated against by incumbent LECs and face substantial delays awaiting the outcome of the Section 251 and 252 process. The subsequent state-by-state resolution of the inevitable stonewalls that will be erected by ILECs to block emergence of the substantially invigorated and expanded national wireless services will cause further delay. Requiring CMRS providers to depend on Section 251 and 252 negotiations under State supervision plainly is not the policy contemplated by Congress nor a policy that the Commission ought to pursue.

Respectfully submitted,



Werner K. Hartenberger  
Laura H. Phillips  
J.G. Harrington

Counsel for Cox Enterprises, Inc.

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<sup>6/</sup> Moreover, as Cox has noted in this proceeding, there is a significant mismatch between existing State authority over CMRS and the actions required under Sections 251 and 252. In general, either as a consequence of Section 332 or under applicable State law, State commissions lack authority to regulate CMRS so their power under Sections 251 and 252 is questionable at best. See Comments of Cox at 46, n.94.

**AGREEMENT  
FOR LOCAL WIRELINE NETWORK INTERCONNECTION  
AND  
SERVICE RESALE  
Between**

**and  
U S WEST Communications, Inc.**

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- A. "Access Services" refers to the tariffed interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic (see FCC Tariff #5 and appropriate state access tariffs). Reference Technical Pub. 77342.
- B. Access Service Request (ASR) means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to "order" trunking and facilities between CLECs and USWC for Local Interconnection Service.
- C. "BLV/BLVI Traffic" or "BLV/BLVI Call" refers to an operator call between a CLEC operator and a USWC operator to inquire as to the busy status of, or requesting an interruption of a call on a Basic Exchange Service.
- D. "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunication Services.
- E. "Calling Party Number" or "CPN" is a Common Channel Signaling parameter which refers to the number transmitted through the network identifying the calling party. Reference Technical Pub. 77342.
- F. "Central office switch", or "central office" means a switching entity within the public switched communications network, including but not limited to:
- "End office switches" which are Class 5 switches from which end user Exchange Services are directly connected and offered.
- "Tandem office switches" are Class 4 switches used to connect and switch trunk circuits between and among to end office switches and other tandems.
- G. "CLASS<sup>®</sup> features" are optional end user switched services which include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; Selective Call Rejection. (See Bellcore documentation for definition).
- H. "Commission" means the \_\_\_\_\_ Public Utilities Commission.
- I. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call. Reference Technical Pub. 77342.
- J. "Competitive Local Exchange Carrier ("CLEC") is a facility based interconnector certified to provide its own dial tone through its own local exchange switching office(s). Competitive Local Exchange Carrier will provide some or all of its own

Services provided by the LEC or CLEC which bear a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Bellcore Practice BR 795-100-100, the Routing Point may be an "End Office" location, or a "LEC Consortium Point of Interconnection". Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The above referenced Bellcore document refers to the Routing Point as the Rating Point. The Rating Point/Routing Point need not be the same as the Rate Center Point, nor must it be located within the Rate Center Area, but must be in the same LATA as the NPA-NXX.

- CC. "Tariff Services" as used throughout this Agreement refers to USWC interstate tariffs and state tariffs, price lists and price schedules and catalogs.
- DD. "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- EE. "Wire Center" denotes a building or space within a building which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched. Wire center can also denote a building in which one or more central offices, used for the provision of Basic Exchange Services and access services, are located. However, for purposes of EC service, Wire Center shall mean those points eligible for such connections as specified in the FCC Docket No. 91-141, and rules adopted pursuant thereto. Reference Technical Pub. 77203, 77318.

#### IV. RECIPROCAL TRAFFIC EXCHANGE

##### A. Scope.

→ | Reciprocal traffic exchange addresses the exchange of local end user traffic between CLEC and USWC end users. Although this Agreement outlines USWC's proposal for interconnection and termination of CLEC traffic on its network, USWC will require a reciprocal agreement for termination of its traffic on CLEC's network. Where either party acts as an intraLATA provider or interLATA Interexchange Carrier (IXC) or where either party interconnects and delivers traffic to the other from third parties, each party shall bill such third parties the appropriate charges pursuant to its respective tariffs or contractual offerings for such third party terminations. This Agreement does not address the termination of wireless traffic.

##### B. Types of Traffic.

The types of traffic to be exchanged under this Agreement include:

1. **EAS** local traffic is traffic that is originated by an end user of one Party and terminates to an end user of the other Party as defined in accordance